

INDEX

- accounting standards, 116, 192, 193
- acquiescence, 154–5
- Administrative Appeals Tribunal, 533
- administrator
 - role in voluntary administration, 448
- AFSL, 264
 - conduct exempt from dealing definition, 529
 - dealing definition and, 528–9
 - exemptions from AFSL requirements, 529
 - meaning of ‘representative’, 529–30
 - general licensee obligations under an AFSL, 530–1
 - financial services provided ‘efficiently, honestly and fairly’, 531–2
 - revocation or suspension of licence, 532–3
 - meaning of ‘make a market for a financial product’, 529
 - who needs, 527–8
- agency
 - broker–client relationship and, 537–8
 - implied agency, 79
 - separate legal entity doctrine and, 79–81
- agents
 - companies entering contracts via, 147
- aggregate theory, 48–50
- Allen* test, 133–4, 135
- alteration of corporate constitution, 132
 - Gambotto’s case* and, 134–9
 - onus of proof, 139
 - reaction to *Gambotto* decision, 139–40
 - reform of the compulsory acquisition provisions, 140
 - restrictions on the majority’s alteration power, 133–4
 - when *Gambotto’s case* tests do not apply, 140
- alternate directors, 178
- amiable lunatic test, 332
- annual financial report, 193–4
- annual general meeting, 183
- apparent authority, 150–4, 156, 159
 - acquiescence, 154–5
- application of directors’ duties to takeovers, 610
 - bidder company directors’ duties, 610
 - target company directors’ duties. *See* target company directors’ duties
- artificial transactions, 556–8
- assets
 - distribution of, ranking of creditors, 482–6
 - recovery of. *See* recovery of assets
- associate, 582–3
 - categories of, 582
- ASX Listing Rules, 62, 269, 510, 511, 512–13, 606
 - administration of, 519
 - content of, 512
 - continuing requirements to maintain listing, 513
 - controlling entry into the stock market and, 513
 - legal status of, 519–20
 - market bids and, 601
 - overview of listing requirements, 512
 - periodic disclosure and, 514
 - regulating supply of information and, 513
 - share buy-backs and, 228
- ASX Operating Rules, 509, 510, 511–12
 - breach of, Australian Securities Exchange powers with respect to, 511–12
- ASX Trading Platform, 535
- auctioneering argument, 604
 - Australian position, 604–5
- Auditing and Assurance Standards Board, 31, 33
- auditor’s report, 192, 195–6
- Australian Accounting Standards Board, 31, 33, 194
- Australian Bureau of Statistics, 85, 108
- Australian Company Number, 95, 96, 146
- Australian Competition and Consumer Commission, 34, 85
- Australian corporate law
 - amending corporations legislation, 41
 - civil penalty regime, 35–8
 - current scheme, 28–9
 - history of. *See* history of Australian corporate law
 - jurisdiction of the courts, 34–5
 - jurisdiction of the legislation, 31
 - referral of powers, 29–30
- Australian Financial Complaints Authority, 530
- Australian Financial Services Licence. *See* AFSL
- Australian Law Reform Commission corporate criminal responsibility review, 88
- Australian market licence, 507
 - criteria for, 507
 - adequate operating rules, 507
 - compensation arrangements, 508
 - fair, orderly and transparent market, 508
 - unacceptable control situation, 508
- Australian Market Licensee, 508

- Australian Prudential Regulation Authority, 34, 248
- Australian Securities Exchange, 31, 106, 126, 168, 174, 189, 242, 249, 267, 440, 507, 520, 523, 525, 527, 601
- ASX Australian Investor Study*, 497
- bidder's statement and, 596, 597
- challenging decisions of, 523–5
- continuous disclosure requirements, 549
- co-regulation of financial markets with ASIC, 509
- Corporate Governance Council, 514
- Corporate Governance Principles and Recommendations*, 62–3, 176, 177, 269, 270–1, 274
- corporate governance statement, 62–3
- Enforcement and Appeals Rulebook, 511
- Operating Rules. *See* ASX Operating Rules
- public announcement of takeover and, 588
- trading contract between brokers, 535
- Australian Securities and Investments
- Commission (ASIC), 27, 66, 85, 187, 193, 195, 204, 280, 296, 398, 413, 414, 523, 577
- amendment of public company constitution and, 132
- application for remedial order and, 621
- approach to enforcement of financial services and markets, 561
- ASX Listing Rules and, 520, 523
- auditors and, 438
- authorised representatives and, 530
- bidder's statement and, 592, 596, 597, 600
- changing proprietary/public status and, 104
- civil proceedings brought by, 423–4
- class actions and, 560
- class orders, 31
- class rights and, 143
- company change of status and, 104, 107, 169
- company registers and, 191
- company reinstatement and, 490
- company secretary and, 149, 175
- compensation orders, 288, 296, 306, 346, 424
- continuous disclosure obligations and, 519
- co-operative relationships, 34
- co-regulation of financial markets with
- Australian Securities Exchange, 509
- court proceedings in takeovers and, 620
- criticism of James Hardie litigation and, 312
- declaration of contravention and, 288–9, 346
- declaration of unacceptable circumstances and, 573
- deed of company arrangement and, 452, 453
- deregistration of companies and, 489–90
- disclosure documents and, 244, 245, 250–1
- disclosure of company information and, 421
- disclosure of material interests and, 379
- disqualification of directors and, 289, 346
- disqualification orders, 38, 288, 306
- Enforcement Review Taskforce, 88
- equal and selective reductions of capital and, 222
- financial assistance transactions and, 236
- financial products and, 498, 499
- financial services licensing and, 527, 530, 532–3
- first creditors' meeting and, 449
- guidance on shares in same class, 201
- information provided to, 192
- injunction remedy and, 419
- inspection of documents lodged with, 423
- interpretation of *Corporations Act 2001* (Cth), 39–40
- liquidators and, 469
- lodgement of bidder's statement with, 596
- lodgement of corporate constitution with, 123
- Market Disciplinary Panel, 510, 511
- Market Integrity Rules, 508, 509, 510, 525
- minute books and, 190
- not-for-profit entities and, 105
- pecuniary penalty orders, 37–8, 288, 296, 306, 346
- persons to act as receivers and, 433
- proceedings for insider trading by, 553
- profile statement and, 249
- prosecution of offences by, 34
- prospectuses and, 257
- public announcement of takeover and, 586, 588
- receivers and, 436
- register of disqualified persons, 289
- registered liquidators and, 447–8
- registration of company by, 96
- regulation of securities markets, 502–3, 507
- Regulatory Guide 111, 598–9
- Regulatory Guide 128, 583
- regulatory guides, 39
- related party transaction and, 381–2
- relief from application of Chapter 6D and, 262
- relinquishment orders, 38, 288
- reservation of company name and, 95
- role of, 32, 498
- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and, 37, 506, 561
- schemes of arrangement and, 442, 565
- share buy-backs and, 227, 228
- share division and, 201
- shareholders' agreements and, 131
- small proprietary companies and, 102
- small proprietary companies financial records and, 192–3
- statutory derivative action and, 409–10, 418
- stop order power, 250
- supervision of financial markets, 508, 511

- takeover bid financing and, 595
- Takeovers Panel and, 572, 575
- third party names and, 158
- 'truth in takeovers' policy, 620
- winding up and, 418, 461, 465, 466, 467, 468, 486, 487, 488
- withdrawal of takeover offer and, 601
- Australian Stock Exchange, 502
- Australian Taxation Office, 34, 85
- basic prohibition in takeovers, 576
 - acquisition resulting in an increase in voting power, 577–8
 - collective action by investors, 583
 - definition of 'associate', 582–3
 - exemptions from, 583
 - creeping takeovers, 583–4
 - takeovers by consent, 584–5
 - prohibited share acquisitions, 576–7
 - relevant interests. *See* relevant interests in voting shares
 - substantial holdings, 578
 - voting power, 581–2
- basic securities transaction, 535–9
 - agency basis of broker–client relationship, 537–8
 - Australian Securities Exchange trading contract
 - between brokers, 535
 - broker–client contract. *See* broker–client contract
 - broker–client fiduciary relationship, 538–9
 - buyer–seller contract, 535
 - clearing and settlement of securities, 536
 - crossings, 535–6
 - fiduciary duties, 538
 - special crossings, 536
- Bell Group* cases, 344–5, 378
- Bentham, Jeremy, 15
- bid period, 570, 571, 601, 613, 619, 620
 - difference between offer period, 588
 - start date, 596
- bidder's statement, 588, 591–4
 - copy to target company, 596
 - lodgement with ASIC, 596
 - notice that statement has been sent to target shareholders, 597
 - to financial market operator, 596
 - to target shareholders, 596–7
- blue sky statements, 251
- board of directors, 173–4
 - delegation of powers, 166–7
 - directors' declaration on the financial reports, 194
 - directors' report, 194–5
 - role of, 178–9
 - types of directors. *See* types of directors
 - where members disagree with a decision of, 179–82
- Board of Trade (UK)
 - report on law of partnership, 11
- bonus shares, 204
- Bosch Report, 302
- break fee, 614–15
- broker–client contract
 - implied terms of, 537
 - terms of, 536
- Bubble Act 1720*, 8–9, 10
- bubbles, 6
 - South Sea Company, 7
- business judgment rule, 285, 314–18, 323
 - safe harbour, 285, 307
- buyer–seller contract, 535
- Cadbury Report, 302
- Campbell Committee, 545
- Campbell Report, 503
- capital, 198
 - distinction between share capital and debt capital, 198
 - regulating reductions of. *See* regulating reductions of capital
- cash flow test of solvency, 322, 427
- certificate of registration, 96
- chairperson, 175–6
- Chapter 6, framework of
 - policy framework, 569–70
 - structure of Chapter 6, 568–9
- Chief Executive Officer, 174
- Chief Financial Officer, 174
- Chief Operations Officer, 175
- Chinese walls, 552
- Chi-X, 503
- chose in action, 205
- civil and criminal wrongs
 - company liability for, 84–5
- class actions
 - enforcement of financial services and markets by, 560
 - private enforcement of financial services and markets by, 423, 519, 561–2
- class orders, 31
- class rights
 - protection of, 141–3
 - reduction of share capital and, 223–4
- classifying shares, 201–2
 - bonus shares, 204
 - employee shares, 204
 - ordinary shares, 202
 - preference shares, 202–3
 - redeemable preference shares, 203–4
- cleansing notice, 249
- closely-held companies, 366–7
- closely-held and widely-held companies, 117–18
- Cohen Committee on Company Law
 - Amendment (UK), 21
- commenda*, 5, 6

- common law contexts in which separate legal entity doctrine may not apply
 - agency, 79–81
 - evasion of a legal obligation, 76–9
 - fraud, 79
- common seal, 146
- Commonwealth Courts Portal, 467
- companies
 - certificate of registration, 96
 - closely-held companies, 366–7
 - closely-held and widely-held companies, 117–18
 - decision-making within. *See* decision-making
 - deed of settlement companies, 8–9, 10, 11, 12, 13, 15
 - deregistration of, 489–90
 - internal rules. *See* internal company rules
 - listed companies, 496
 - lodgement and payment of registration, no liability company, 106
 - obtaining consent, 95
 - one director/shareholder companies, 123–5
 - one-person companies, 118–19
 - other distinctions between public and proprietary companies, 103–4
 - perpetual succession of, 97
 - preparation of internal management rules, 95
 - proprietary companies. *See* proprietary companies
 - public companies. *See* public companies
 - public/private divide, 100
 - quasi-partnership companies, 118
 - registration of. *See* registration of companies
 - reinstatement of, 490
 - reporting and disclosure. *See* reporting and disclosure
 - shelf companies, 96
 - single director/shareholder companies, 188
 - under the *Corporations Act 2001* (Cth), 100
 - unlimited liability companies, 106
- Companies Auditors Disciplinary Board, 33
- Companies and Securities Advisory Committee, 225
 - advantages where target company becomes part of corporate group and, 615
 - Final Report on Corporate Groups*, 92, 116–17
 - recommendations on corporate groups, 116–17
- company
 - change of status, 107–8
 - constitution. *See* corporate constitution
 - as distinct legal person, 268
 - liability of members to. *See* liability of members to the company
 - relationship to other companies, 108–9
- company directors
 - appointment of, members' powers and, 169
 - board of directors. *See* board of directors
 - contract of service and, 127
 - definition, 273–4
 - disqualification of, 289–90, 346
 - exoneration and relief for breach of duties. *See* exoneration and relief for directors
 - public companies, 103–4
 - reasons for regulating behaviour of, 272–3
 - removal of, members' powers and, 170
 - remuneration of. *See* remuneration of company directors
 - single, implied authority of, 150
 - types of. *See* types of directors
- company information
 - access to, 420–3
- Company Law Advisory Committee, 569
- Company Law Review Steering Group (UK), 349–50
- company liability
 - civil and criminal wrongs, 84–5
- company liability in criminal law, 85–8
 - Criminal Code Act 1995* (Cth), 89
 - vicarious liability, 89–90
- company limited by guarantee
 - liability of members to, 105
- company limited by shares
 - liability of members to, 104
- company members. *See* members
- company name
 - change of, members' powers and, 104
 - reservation of, 95
- company property, 97
- company registers, 191
- company rules
 - internal. *See* internal company rules
- company secretary, 96, 146, 175
 - implied authority of, 149
 - role of, 149
 - witnessing of documents by, 146
- company type
 - change of, members' powers and, 104
- compensation orders, 288, 296, 306, 346, 424
 - limitation period, 290
- compulsory acquisitions, 615–16
 - dissenting minorities and, 617
 - fair value for securities, 617–18
 - of minority shares in a takeover, 616–17
- compulsory buy-out of securities, 618
- concession theory, 46–8, 386
- conflicts of interest, 286
 - disclosure. *See* disclosure of personal interests
 - fiduciary obligation to avoid. *See* fiduciary obligation to avoid conflicts of interests
 - related party transactions. *See* related party transactions
- consequences of breach of directors' duties
 - civil penalties provisions, 288–90
 - common law and equitable consequences, 287–8

- criminal consequences, 290–1
- election between regulatory proceedings, 291
- Constitutional Conventions, 19
- content of disclosure documents, 251–2
 - forward-looking statements, 252–4
 - general disclosure requirements, 252
 - illustrations of *Corporations Act 2001* (Cth) s 710(2). *See* illustrations of s 710(2)
 - specific disclosure requirements. *See* specific disclosure requirements
- continuous disclosure, 513, 514–18, 549
 - remedies for breach of obligation, 519
- contractual perspective of corporate law, 49, 386
- co-operatives, 99
- Co-operatives National Law, 99
- corporate collapses, 283, 301
 - HIH Group, 382–3, 429
 - National Safety Council Victorian Division, 105
 - One.Tel, 307
 - Qintex Group, 113–14
- corporate constitution, 121, 122, 123
 - additional members' rights under, 172–3
 - adopting or amending, members' powers and, 168–9
 - alteration of. *See* alteration of corporate constitution
 - breaches of, 128
 - contractual relationships in, 127–8
 - meeting procedures and, 183
 - power of board and members under, 166
- corporate contracting
 - actual and implied authority, 147–8
 - apparent authority. *See* apparent authority
 - authority by ratification, 162
 - common seal and, 146
 - companies entering contracts directly, 145–6
 - companies entering contracts via agents, 147
 - effect of non-compliance with internal matters on validity of. *See* effect of non-compliance with internal matters on validity of a contract
 - implied authority of a company secretary, 149
 - implied authority of a managing director, 148–9
 - implied authority of a single director, 150
 - pre-registration contracts, 162–4
- corporate disclosure
 - continuous disclosure, 513, 514–18
 - periodic disclosure, 514
- corporate enforcement pyramid, 36–7
- corporate entities
 - co-operatives, 99
 - incorporated associations, 98–9
 - statutory corporations, 99
- corporate finance
 - concept of capital, 198
 - financial assistance transactions. *See* financial assistance transactions
 - maintenance of capital, 210–13
 - sources and consequences of, 199
- corporate fundraising, 240
 - raising share capital under *Corporations Act 2001* (Cth) Chapter 6D. *See* raising share capital under Chapter 6D
- corporate governance, 266–7
 - Australian, 267–71
 - comparative corporate governance, 271–2
 - definition, 267
 - maintenance of accountability in, 386–7
- corporate groups, 81–4, 110–17
 - advantages where target company belongs to, 615
 - Companies and Securities Advisory Committee recommendations on, 116–17
 - definition, 112
 - duty to act in the best interests of the company and, 335–6
 - entity model, 113
 - horizontal and vertical organisation of, 112
 - liability within, 92
 - processes of creation of, 112
 - remedy for oppression and unfairness and, 400
- corporate law
 - Australian. *See* Australian corporate law
 - global model of, 42
 - global or local, 65–6
 - importance of context, 2
 - perennial questions, 2–3
 - twenty-first century, parameters of, 28
- Corporate Law Economic Reform Program, 569
- corporate law theory
 - aggregate theory and, 48–50
 - concession theory and, 46–8, 386
 - contractual perspective, 49, 386
 - corporate social responsibility. *See* corporate social responsibility
 - economic theories and, 50–3
 - feminist theory and, 57–9
 - importance of, 44–5
 - natural entity theory and, 54–6
 - organisational perspective and, 56–7
 - team production theory and, 53–4
- corporate liability in tort, 90
 - policy considerations, 90–2
- corporate social responsibility, 60–1
 - enlightened shareholder value and, 61–3
 - globalisation and, 64–5
 - stakeholder theory and, 63–4
- corporate veil, 76, 78, 273, 321
- corporation sole, 95
- corporations
 - classifications of
 - closely-held and widely-held companies, 117–18

- corporations (*cont.*)
 - corporate groups, 110–17
 - one-person companies, 118–19
 - definition, 94–5
 - statutory corporations, 99
 - types of, 98
- Corporations Act 2001* (Cth)
 - additional members' rights under, 172–3
 - administration and enforcement of, 31–4
 - best interests duties under pt 7.7A, 542–3
 - companies under, 100
 - consequences for contravention of s 260A, 237–8
 - constitutional basis of, 29
 - definition of derivatives under, 500
 - duty of care, skill and diligence and. *See* duty of care, skill and diligence
 - duty to prevent trading whilst insolvent and, 321–7
 - fiduciary obligation to avoid conflicts of interest and, 374–5
 - framework of Chapter 6. *See* Chapter 6, framework of
 - illustrations of s 710(2). *See* illustrations of s 710(2)
 - Insolvency Practice Schedule (Corporations), 447
 - interpretation of
 - by ASIC, 39–40
 - complexity of the Act, 40
 - impact of general law, 41
 - interpretation provisions, 38–9
 - issues and debates in, 39–41
 - judicial interpretation of s 793C, 520–3
 - listing relationship and s 1101B, 523
 - members' powers to make decisions under. *See* members' powers to make decisions under the *Corporations Act 2001* (Cth)
 - proving an exemption under Part 6D.2, 249
 - raising share capital under Chapter 6D.
 - See* raising share capital under Chapter 6D
 - regulations and delegated legislation under, 31
 - related body corporate, 109
 - Small Business Guide, 40, 102
- Corporations and Markets Advisory Committee, 349, 350
 - abolition of, 34
 - Corporate Social Responsibility*, 62, 64
- court appointed receiver, 436–7
- court order to wind up the company, 464
- COVID-19 pandemic, 462
- creditors' meetings
 - first creditors' meeting, 449
 - second creditors' meeting, 449–51
- creeping takeovers, 583–4
- criminal law
 - company liability in. *See* company liability in criminal law
- crossings, 535–6
- crowd-sourced funding, 242, 263
 - equity crowd-sourced funding, 263–4
 - intermediaries, 264
 - offer, 263, 264
- crown jewels defence, 607
- crystallisation, 209
- damages
 - breach of statutory contract, 130
- Datafin* principle, 525
- Davey Committee, 18, 241
- de facto directors, 273, 274–5, 322, 361
- debentures
 - debenture trust deed, 207–8
 - definition, 207
- debt capital, 198
 - distinction between share capital, 198
- debt finance, 206
 - charges, 207, 209
 - context of, 206–7
 - debentures. *See* debentures
 - instruments, 207
 - security interests. *See* security interests
 - sources of, 206
- decision-making, 166
 - application of the division of powers, 166–7
 - control of general meeting and, 166
 - single director/shareholder companies, 188
- declaration of contravention, 288–9, 346
 - limitation period, 290
- deed of company arrangement, 444, 445, 448, 451
 - administration, 451–2
 - setting aside, 452–6
- deed of settlement companies, 8–9, 10, 11, 12, 13, 15, 16
- deregistration of companies, 489–90
- derivatives
 - definition under *Corporations Act 2001* (Cth), 500
 - functions or commercial nature of, 500
 - futures contract, 500
 - things that are derivatives, 501
 - things that are not derivatives, 501
- directors' duties
 - application of to takeovers. *See* application of directors' duties to takeovers
 - common law and equitable foundations of current common law position, 304–6
 - early case law, 300–1
 - modern development of the duty of care, skill and diligence, 302–4
 - conflicts of interest. *See* conflicts of interest

- consequences of breach of. *See* consequences of breach of directors' duties
- delegation and reliance, 318–20
- duties of loyalty and good faith, 306–14
- duty not to fetter discretion, 351–2
- duty of care, skill and diligence. *See* duty of care, skill and diligence
- duty to act in the best interests of the company. *See* duty to act in the best interests of the company
- duty to prevent trading whilst insolvent. *See* duty to prevent trading whilst insolvent
- historical development of. *See* historical development of directors' duties
- reliance, 320–1
- summary of, 284
- directors' meetings, 188
- disclosure documents, 242, 244
 - content of. *See* content of disclosure documents
 - lodgement of. *See* lodgement of disclosure documents
 - offers requiring lodgement with ASIC, 245
 - regulating secondary sources of information. *See* regulating secondary sources of information
 - supplementary and replacement disclosure documents, 258
 - use of, 243
 - when to be issued, 243
- disclosure of personal interests, 171–2
 - directors of public companies and, 379–80
 - exceptions to disclosure of material interests, 378
 - general law and, 379
 - material personal interests, 376–8
- disqualification orders, 38, 288, 306
- dissenting minorities, 617
- dividends, 213–14, 494
 - payment of, 215–16
 - when a company may pay, 214–15
- DOCA. *See* deed of company arrangement
- due diligence defence, 260–1
 - lack of knowledge defence, 261
 - reasonable reliance defence, 261
 - withdrawal of consent defence, 261
- dummying, 18, 19, 106
- duty of care, skill and diligence, 284–5, 306
 - business judgment rule, 314–18
 - duty of care and diligence, 306–14
 - modern development of, 302–4
- duty to act in the best interests of the company, 610
 - application to corporate groups, 335–6
 - application to other stakeholders, 336–9
 - development of the duty, 330–1
 - equitable or fiduciary duty, 344–6
 - meaning of best interests of the company, 333–4
 - meaning of bona fide, 331–3
 - meaning of for proper purposes, 339–43
 - statutory duty. *See* statutory duty to act in the best interests of the company
 - summary of, 343–4
- duty to prevent trading whilst insolvent, 321
 - consequences for breach, 327
 - Corporations Act 2001* (Cth) s 588G, 321–3
 - Corporations Act 2001* (Cth) s 588GA, 323–5
 - Corporations Act 2001* (Cth) s 588H, 325–7
 - safe harbour provisions, 284, 324
- economic theory, 63, 603
 - corporate law and, 50–3
- effect of non-compliance with internal matters
 - on validity of a contract, 155–6
 - limitations on the application of the statutory assumptions, 162
 - statutory assumptions, 156–60
- efficient capital market hypothesis, 495–6
- Eggleston Principles, 569, 577
- employee share scheme buy-backs, 228
- employee shares, 204
- employees
 - excluded employees, 484
 - insolvent companies and, 484
 - winding up and, 469, 488
- enforcement of financial services and markets, 560
 - ASIC's approach to enforcement, 561
 - private enforcement by class actions, 561–2
- English company law
 - Bubble Act 1720* and, 8–9
 - Companies Act 1862*, 14–15
 - early company legislation, 11
 - Joint Stock Companies Act 1844*, 11–13
 - Joint Stock Companies Act 1856*, 13–14
 - nineteenth century, 10–11
 - seventeenth and eighteenth centuries, 4–8
 - summary of developments in, 15
- enlightened shareholder value, 61–3, 337, 349–51
- equal and selective reductions of capital, 219
 - approval by shareholders, 221–2
 - fair and reasonable to shareholders, 219–21
 - no material prejudice to creditors, 221
 - notice and lodgement with ASIC, 222
- equity crowd-sourced funding, 263
 - regulation of, 263–4
- exoneration and relief for directors, 291–2
 - indemnification and insurance, 296–7
 - ratification by the members, 292–4
 - relief by the court, 294–6
- external administration, 427
- extract of particulars, 192
- extraordinary members' meeting, 183–4

- Fair Entitlements Guarantee scheme, 484
 Fair Work Commission, 85
 Fair Work Ombudsman, 85
 feminist theory, 57–9
 fiduciary duties
 intermediaries, 538
 fiduciary obligation to avoid conflicts of interest, 355–6
 beneficiaries of, 362–3
 closely-held companies, 366–7
 company about to be wound up, 365–6
 director purchases shares from a member, 364–5
 brief history of equity and the fiduciary obligation, 356–8
 commercial context, 367–8
 corporate opportunities for directors, 368–71
 multiple directorships, 372–3
 provision of fully informed consent, 371–2
 Corporations Act 2001 (Cth) sections 182 and 183, 374–5
 nominate categories relationships, 360–2
 origin of no conflict rule, 358–9
 origin of no profit rule, 359–60
 relationship between statute and fiduciary obligations, 373–4
 fiduciary relationship
 broker–client, 538–9
 financial advisers
 evolving best interests fiduciary duty, 540–2
 statutory best interest test, 539–40
 summary of best interests duties, 542–3
 financial assistance transactions
 problems and benefits of, 230
 regulation of. *See* regulation of financial assistance transactions
 financial literacy, 497
 financial markets, 494–6
 ASX Listing Rules and. *See* ASX Listing Rules
 Australian, background to regulation of, 503–6
 certification of market operators, 506
 challenging Australian Securities Exchange decisions, 523–5
 contents of operating rules, 511
 definition, 507
 development of Australian stock markets, 502–3
 enforcement of. *See* enforcement of financial services and markets
 ex ante regulation, 506
 ex post regulation, 506
 Financial System Inquiries, 503
 intermediaries, 496
 investors, 497–8
 legal nature of the listing relationship. *See* listing relationship
 licensing as a regulatory strategy, 506
 licensing system for, 507
 listed companies, 496
 misconduct in. *See* market misconduct
 over-the-counter markets, 503
 remedies for breach of continuous disclosure obligation, 519
 role of ASIC in, 498
 supervision of. *See* supervision of financial markets
 financial product advice
 definition, 527
 general advice, 528
 types of, 527
 financial products
 definition, 498–9, 527
 derivatives, 500–1
 ‘Division 3 financial products’, 546
 obligations of advisers and dealer in. *See* obligations of advisers and dealers in financial products
 securities, 499–500
 financial records, 190–1, 192–3
 failure to comply with requirements for keeping of, 196
 financial reporting, 192
 financial records, 192–3
 Financial Reporting Council, 33
 financial reports, 193
 annual financial report, 193–4
 auditors’ report, 195–6
 directors’ declaration on the financial reports, 194
 directors’ report, 194–5
 financial services and markets, enforcement of.
 See enforcement of financial services and markets
 Financial Services Authority (UK), 34
 Financial Services Guide, 533
 financial services licensing, 527
 Australian Financial Services Licence. *See* AFSL
 obligations of advisers and dealers in financial products, 525–7
 Financial System Inquiries, 503
 foreign company, 110
Foss v Harbottle rule, 394, 409
 exceptions to, 390
 fraud on the minority, 391–3
 infringements of personal rights, 391
 interests of justice, 393
 special majority, 391
 ultra vires actions, 391
 members’ rights and, 388–90
 fraud, 101, 146
 separate legal entity doctrine and, 79
 fraud on the minority, 134, 283, 292, 391–3

- fraud on the power, 340
- frustrating action, 609
- Future of Financial Advice, 526, 539
- futures contract, 500
- Gambotto's case*, 134–9, 615–16
 - expropriation of shares and, 394
 - reaction to, 139–40
 - when tests in do not apply, 140
- general law remedies available to minority
 - shareholders, 393
- Gambotto's case* and expropriation of shares, 394
- infringement of a member's personal rights and, 394–6
- general market misconduct, 553–4
 - general categories of prohibited activity, 553–4
 - manipulations based on artificial transactions, 556–8
 - price manipulation, 559
- general meeting, 133
 - control of and decision making, 166
 - members' powers in, 168
- Gladstone Committee, 12
- globalisation
 - corporate social responsibility and, 64–5
- golden parachutes, 606
- Griffiths Committee, 545
- Harmer Report, 322, 326, 436, 444, 472
- Hayne Royal Commission. *See* Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
- High Court of Australia
 - Corporations Act 1989* (Cth) in, 25–6
- HIH Group, 382–3, 429
- historical development of directors' duties
 - company law and directors' duties from 1900s to present, 282–4
 - company law and directors' duties to 1900, 281–2
- history of Australian corporate law, 15–16
 - beginnings, 1788–1890s, 16
 - boom and depression, 1850s–1890s, 16–18
 - Companies and Securities Advisory Committee, 34
 - co-operative scheme, 1980–1990, 23–5
 - Corporations Act 1989* (Cth) in the High Court, 25–6
 - early moves towards uniformity, 1890s–1930s, 18–20
 - first uniform legislation, 1950s–1980, 20–3
 - Interstate Corporate Affairs Commission, 22
 - Ministerial Council for Companies and Securities, 23
 - National Companies and Securities Commission, 23–4
 - national scheme, 1991–2001, 26–8
 - Rae Committee, 22
 - Rae Report, 22, 24
 - Senate Standing Committee on Constitutional and Legal Affairs Report 1987, 24
 - Senate Standing Committee on Constitutional and Legal Affairs Report 1989, 36, 288, 337, 350
- holding company, 109
- illustrations of s 710(2)
 - matters likely investors may reasonably be expected to know, 254–6
 - nature of the securities, 254
- image advertising, 259
- incorporated associations, 98–9
- incorporation
 - capacity to issue financial security, 119–20
 - choosing the form of, 119–20
 - limited liability of members and, 119
 - taxation and, 120
- independent directors, 174, 177
- indoor management rule, 146, 155, 156
- information-based market manipulation, 554–6
 - false or misleading statements, 555–6
 - misleading or deceptive conduct in relation to a financial product or service, 554–5
- information provided to ASIC
 - extract of particulars, 192
 - registered office, 192
- initial public offerings, 242, 243, 251, 500
- prospectuses, 252, 254, 261
- injunction remedy, 419–20
 - access to company information and, 420–3
 - civil proceedings brought by ASIC, 423–4
 - takeovers, 620
- inside information, 547–8
- insider trading, 544–5
 - acts that breach the insider trading prohibition, 551–2
 - 'procure', 551
 - tipping, 551–2
- basic prohibition, 545
- elements of, 285, 321
- exceptions and defences to the insider trading prohibition, 552
- Chinese walls, 552
- general, 552
- knowledge test, 550–1
- prerequisites to the insider trading prohibition, 545–50
 - 'Division 3 financial products', 546
 - information 'generally available', 548–9
 - 'inside information', 547–8
 - 'knowledge', 546

- insider trading (*cont.*)
 - material effect, 549–50
 - 'person', 546
 - 'possesses', 546
 - remedies for, 553
- insolvency, 427–30
 - ability to pay and, 427–8
 - compulsory winding up in. *See* winding up in insolvency
 - definition, 427, 461
 - due and payable and, 428–9
 - employees and, 484
 - proving insolvency, 461–2
 - secured creditors in, 430–2
- insolvency law
 - essential tenets of, 430
 - importance of, 429
 - policy tenets of, 459–60
 - purposes of, 429–30
- Insolvency Practice Rules (Corporations), 469
- Insolvency Practice Schedule (Corporations), 447, 469
- insolvent trading
 - safe harbour, 324
- institutional investors, 167, 498
- intermediaries, 496
 - fiduciary duties, 538
- internal company rules
 - corporate constitution, 123
 - Memorandum and Articles of Association, 122
 - objects clauses and ultra vires, 122–3
 - one director/shareholder companies, 123–5
 - overview, 122
 - statutory contract. *See* statutory contract
- International Organization of Securities Commissions, 34
- investors, 497–8
 - financial literacy of, 497
 - institutional investors, 168, 498
 - matters investors likely to know, 254–6
 - professional investors, 248, 259, 534
 - retail investors, 264, 497–8
 - sophisticated, 247–8, 259, 497
- James Hardie Industries, 90–1, 309–12, 516–17, 556
- Jenkins Committee, 230, 397
- joint stock company, 6, 7–8, 9, 10, 11, 100
 - unincorporated, 6, 10, 11
- joint stock principle, 4–5, 6, 7, 8–9, 10
- knowledge test, insider trading, 550–1
- lack of knowledge defence, 261
- Legislative and Governance Forum on Corporations, 41
- liability for defective disclosure under Chapter 6D
 - civil liability, 260
 - civil liability to pay compensation, 260
 - general liability, 259
- liability of members to the company, 104
 - company limited by guarantee, 105
 - company limited by shares, 104–5
 - no liability company, 106
 - unlimited liability company, 106
- licensing system for financial markets *See* Australian market licence
- limited liability, 73–4, 101, 200
 - application of, 2000 reforms to, 92
 - Joint Stock Companies Act 1844* and, 12–13
 - nineteenth century, 11, 212
- liquidation, 459
 - objectives, 460
- liquidators
 - difference between provisional liquidators, 470
 - duties of, 470–2
 - notification of, 467
 - obtaining consent of, 466
 - powers of, 470
 - registered company liquidators, 439, 447
 - registration of, 469–70
 - responsibilities to the court, 471
- listed companies, 496
- listing relationship, 519–523
 - Corporations Act 2001* (Cth) s 1101B and, 523
 - judicial interpretation of *Corporations Act 2001* (Cth) s 793C, 520–3
- lock-up devices, 614–15
- lodgement of disclosure documents, 250
 - exposure period, 250–1
- managing director, 174
 - implied authority of, 148–9
- market bids, 601
 - offer in, 602
 - steps of, 601
 - variation and withdrawal of offer in, 602
- market misconduct, 543–4
 - general. *See* general market misconduct
 - insider trading. *See* insider trading
 - reasons for, 543
 - remedies for, 560
- Marx, Karl, 8, 11
- material interests, disclosure of. *See* disclosure of personal interests
- meetings, 182–3
 - directors' meetings, 188
 - members'. *See* members' meetings
 - procedures for, 183
- members
 - liability of to company. *See* liability of members to the company
 - statutory remedies available to, 396

- members' meetings
 - annual general meeting, 183
 - convening an extraordinary members' meeting, 183–4
 - general meeting. *See* general meeting
 - notice of a meeting, 184–5
 - proposing a resolution, 184
 - proxy voting, 186–7
 - quorum, 185
 - validation of incorrect procedure, 187–8
 - voting, 185–6
- members' powers to make decisions under the *Corporations Act 2001* (Cth)
 - adopting or amending the constitution, 168–9
 - appointing directors, 169
 - changing company name or type, 104
 - decisions related to share capital, 170–1
 - disclosure and voting on directors' remuneration, 171–2
 - removing directors, 170
 - varying the rights attached to shares, 170
- members' rights, 167–8, 386–8
 - additional rights under the *Corporations Act 2001* (Cth) and corporate constitution, 172–3
 - Foss v Harbottle* rule and. *See Foss v Harbottle* rule
 - injunction remedy. *See* injunction remedy
 - members' powers in the general meeting, 168
 - members' powers to make decisions under the *Corporations Act 2001* (Cth). *See* members' powers to make decisions under the *Corporations Act 2001* (Cth)
 - members' reserve powers, 173
 - personal rights. *See* personal rights
- Memorandum and Articles of Association, 122
- mens rea, 55
- Mill, John Stuart, 7, 11, 47
- minority shareholders, 189
 - dissenting, 617
 - exit option, 388
 - general law remedies available to. *See* general law remedies available to minority shareholders
 - shareholders
 - voice option, 388
- minute books, 189–90
- Murray Report, 503
- National Guarantee Fund, 508
- National Safety Council Victorian Division, 105
- National Stock Exchange of Australia, 503
- natural entity theory, 54–6
- no conflict rule, 355, 358–9
- no liability company
 - liability of members to, 106
- no profit rule, 355, 359–60
- nominee directors, 177–8
- non-executive directors, 176–7
- not-for-profit entities, 105
- obligations of advisers and dealers in financial products, 525–7
 - definition of retail client, 534–5
 - disclosures required by providers under *Corporations Act 2001* (Cth), 533–4
 - financial services licensing, 527–30
- off-market bids, 585–6
 - bidder's intentions, 594–5
 - bidder's statement, 591–4
 - bidder's voting power, 596
 - completion of steps in, 600
 - extensions of offer period in, 601
 - financing the bid, 595
 - lodging and serving the bidder's statement, 596–7
 - offer. *See* takeover offer
 - offer document, 588
 - public announcement, 586–8
 - role of the independent expert, 598–600
 - target's statement, 597–8
 - variation and withdrawal of offer in, 600–1
- offer information statement, 244–5, 249, 261
- offer period, 585, 596, 602, 615
 - definition, 588
 - difference between bid period, 588
 - extensions of, 601
 - start date, 596
- offers that do not need disclosure, 246
 - personal offers, 246–7
 - professional investors, 248
 - proving an exemption under Part 6D.2, 249
 - rights issues, 248–9
 - small-scale offers, 246
 - sophisticated investors, 247–8
 - twenty investors ceiling, 247
- officers of a corporation, 277–80, 322
- one director/shareholder companies, 123–5
- one-person companies, 118–19
- One.Tel, 307, 316–17
- Opes Prime Stockbroking Ltd, 440–1
- oppression or unfairness
 - remedy for. *See* remedy for oppression or unfairness
- ordinary shares, 202
- Organisation for Economic Co-operation and Development
 - Guidelines for Multinational Enterprises, 64
- organisational perspective on corporate law theory, 56–7
- over-the-counter markets, 503
- parent company, 81
- pari passu principle, 459, 483, 484

- Parliamentary Joint Committee on Corporations and Financial Services, 33, 526
Corporate Responsibility; Managing Risk and Creating Value, 348
Inquiry into Financial Products and Services, 526
- pathfinders, 259
- pecuniary penalty orders, 37–8, 288, 296, 306, 346
 limitation period, 290
- periodic disclosure, 514
- perpetual succession, 97
- personal interests
 disclosure of. *See* disclosure of personal interests
- personal rights
 infringement of, 391, 394–6
- poison pills, 607
- PPS Register, 210
- preference shares, 202–3
 redeemable preference shares, 203–4
- price manipulation, 559
- private appointment, 432–3
- procedure for winding up by court order, 465–7
 affidavit and, 466
 consent of liquidator and, 466
 filing and serving originating process, 465–6
 hearing of the applicant, 466–7
 making a statutory demand, 465
 making an application for a winding up order, 465–6
 nature of application, 465
 publishing notice of the application, 466
 steps to be taken after the hearing if winding up order made, 467
 steps to be taken before the hearing, 466
- process of approval of schemes of arrangement, 441–2
 creditors' meeting, 442–3
 second creditors' meeting, 443
 termination of a scheme, 443
- Product Disclosure Statement, 504, 533–4
- professional investors, 248, 534
- profile statement, 244, 245, 249, 257, 261
- promoters, 163–4
- proper plaintiff principle, 97
- proprietary companies, 100–3
 application of division of powers and, 100–3
 large, criteria for, 102
 other differences to public companies, 103–4
 replaceable rules, 103
 small. *See* small proprietary companies
- prospectuses, 243, 244, 249
 continuous disclosure prospectuses, 257
 due diligence defence, 261
 due diligence for, 260–1
 initial public offerings, 252, 254, 261
 maximum life of, 257
 raising share capital under Chapter 6D and, 249
 short-form, 245, 249, 257
 specific disclosure requirements, 256–7
 takeover offers and, 588, 592, 597
 transaction specific, 254
- public authority, 94
- public companies, 103
 application of division of powers and, 166–7
 directors, disclosure of material interests and, 379–80
 directors of, 103–4
 other differences to proprietary companies, 103–4
- Qintex Group, 113–14
- quasi-partnership companies, 118
- quasi-partnerships, 416
- quorum, 185
- Rae Committee, 22, 554
- Rae Report, 22, 24
- raising share capital under Chapter 6D, 241
 ASIC relief from application of Chapter 6D, 262
 basic framework of Chapter 6D, 244–5
 crowd-sourced funding. *See* crowd-sourced funding
 defences, 260–1
 disclosure documents and. *See* disclosure documents
 liability for defective disclosure. *See* liability for defective disclosure under Chapter 6D
 offer of securities, 245–6
 offers that do not need disclosure. *See* offers that do not need disclosure
 overview of disclosure requirements, 244
 preparation of prospectus or shorter document, 249
 regulation of further disclosure, 257
 securities hawking prohibition, 262
 terminology and context, 242–3
- reasonable reliance defence, 261
- receivership, 432
 court appointed receiver, 436–7
 duties of receiver, 435–6
 effects of appointment of receiver, 438
 liabilities and indemnities of receiver, 436
 order of payment, 437–8
 powers of receiver, 433–5
 private appointment, 432–3
 purpose of, 432–3
 relationship with other external administrations, 438–9
- recovery of assets, 472–3
 insolvent transactions, 477
 invalid circulating security interests, 479–80
 uncommercial transactions, 476–7
 unfair loans, 477–8
 unfair preferences, 474–6

- unreasonable director-related transactions, 478–9
- rectification, 130
- redeemable preference shares, 203–4
- reduction of share capital, 217–18
 - class rights and, 223–4
- registered company liquidators, 439, 447
- registered office, 192
- registrable Australian bodies, 110
- registration of companies
 - consequences of registration, 97
 - registration patterns, 108
 - registration process, 95–7
- regulating reductions of capital, 218
 - authorised reductions, 218–19
 - equal and selective reductions. *See* equal and selective reductions of capital
 - protecting interests affected by a reduction, 222–3
- regulating secondary sources of information, 258
 - image advertising, 259
 - pathfinders, 259
- regulation of broker–client relationship
 - basic securities transaction. *See* basic securities transaction
 - evolving financial adviser best interests
 - fiduciary duty, 540–2
 - financial adviser statutory best interest test, 539–40
 - summary of financial adviser best interests duties, 542–3
- regulation of financial assistance transactions, 230
 - consequences for contravention of
 - Corporations Act 2001* (Cth) s 260A, 237–8
 - exempted transactions, 236–7
 - material prejudice, 234–6
 - permitted financial assistance transactions, 231
 - what is financial assistance, 231–4
- regulation of share buy-backs, 225–6
 - 10/12 limit, 226–7, 228
 - ASX Listing Rules and, 228
 - employee share scheme buy-backs, 228
 - equal access scheme, 226–7
 - on-market buy-back, 228
 - protecting interests affected by a buy-back, 228–9
 - selective buy-back, 227–8
- reinstatement of companies, 490
- related party transactions, 380
 - application of the law in HIH collapse, 382–3
 - exceptions to member approval requirement, 381
 - procedure for obtaining member approval, 381–2
 - related parties and giving a financial benefit, 380–1
- relation-back day, 467–8, 473, 480
- relevant interests in voting shares, 578–9
 - circumstances not giving rise to a relevant interest, 580–1
 - deemed relevant interests, 579–80
 - relevant interests held through bodies
 - corporate, 579
- relinquishment orders, 38, 288
 - limitation period, 290
- remedial orders, 575, 620–1
- remedies
 - available to minority shareholders. *See* general law remedies available to minority shareholders
 - breach of continuous disclosure obligation, 519
 - for insider trading, 553
 - for market misconduct, 560
 - injunction remedy. *See* injunction remedy
 - statutory, available to members, 396
- remedies for breach of the statutory contract, 128
 - additional members' remedies under a
 - shareholders' agreement, 131
 - additional members' remedies under statute, 131
 - rectification and damages, 130
 - seeking a declaration or injunction, 128–30
- remedy for oppression or unfairness, 397
 - grounds for complaint, 400–6
 - orders, 407–8
 - standing, 398–9
 - statutory derivative action and, 414
 - type of conduct, 399–400
- remuneration of company directors
 - disclosure and voting, members' powers and, 171–2
- replaceable rules, 95, 121, 122, 123, 148, 166, 168, 169, 170, 173, 174, 175, 178, 183, 185, 186, 187, 188, 190, 214, 421
 - breaches of, 128
 - companies which cannot use, 126
 - proprietary companies, 103
- reporting and disclosure, 189
 - auditor's report, 192, 195–6
 - company registers, 191
 - financial records, 190–1
 - financial reports, 191
 - information provided to ASIC. *See* information provided to ASIC
 - minute books, 189–90
- retail client, 499
 - definition, 534–5
- retail investors, 264, 497–8
- rights issues, 248–9
- Ripoll Committee, 539
- Ripoll Report, 526
- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 88, 262, 266, 271, 280, 284, 355, 504–5, 561

- Royal Commission (*cont.*)
 ASIC and, 37
 recommendations, 505
 terms of reference, 505
 Royal Commission on company law (Ghana), 21
- Salomon's case*
 adoption of, 74–6
 importance of, separate legal entity doctrine, 72–4
- schemes of arrangement, 439–40, 565–6
 must involve an arrangement or compromise, 440–1
 process of approval of. *See* process of approval of schemes of arrangement
- secured creditors, 430–2, 479
- securities, 494
 basic transaction of. *See* basic securities transaction
 bid class, 585–6, 590, 591, 597, 598, 602, 616, 617, 618
 clearing and settlement of, 536
 compulsory buy-out of, 618
 definition, 245, 499–500, 585
 ED securities, 516
 fair value for in compulsory acquisitions, 617–18
 listed, content of disclosure documents for, 257
 offer of, 245–6
 quotation of, 257
 transfer of in equity markets, 509
- Securities Commission of New Zealand, 34
- Securities Exchange Commission (USA), 34
- securities hawking, 262
- security interests, 208–9
 circulating security interests, 208, 209
 definition, 208–9
 invalid circulating security interests, 479–80
 non-circulating security interests, 209
 priority rules, 210
 registration of, 210
- separate legal entity doctrine, 70–2
 adoption of *Salomon's case*, 74–6
 arguments for limitation of operation of, 91
 common law contexts in which doctrine may not apply. *See* common law contexts in which separate legal entity doctrine may not apply
 exceptions to, 76
 importance of *Salomon's case*, 72–4
 statutory provisions avoiding, 81
- shadow directors, 273, 275–6, 277, 322, 361
- share acquisitions
 prohibited, 576–7
 resulting in an increase in voting power, 577–8
- share buy-backs, 224
 problems and advantages of, 224–5
 regulation of. *See* regulation of share buy-backs
- share capital
 alteration of, 216–17
 decisions relating to, members' powers and, 170–1
 distinction between debt capital, 198
 raising under *Corporations Act 2001* (Cth) Chapter 6D. *See* raising share capital under Chapter 6D
 reduction of. *See* reduction of share capital
- share dividends. *See* dividends
- share finance
 classifying shares. *See* classifying shares
 legal nature of a share, 204–6
 types of, 199–200
- shareholder activism, 167, 181, 182
- shareholders
 approval of equal and selective reductions of capital by, 221–2
 dissenting minorities, 617
 equal and selective reductions of capital and. *See* equal and selective reductions of capital
 minority. *See* minority shareholders
 target, bidder's statement and, 596–7
- shareholders' agreement
 remedies for breach of statutory contract and, 131
- shares
 bonus shares, 204
 classification of. *See* classifying shares
 employee shares, 204
 legal nature of, 204–6
 preference shares, 202–3
 redeemable preference shares, 203–4
 relevant interest in voting shares. *See* relevant interests in voting shares
 self-acquisition and control of, 217
 varying rights attached to, members' powers and, 170
- shelf company, 97
- short-term target company defensive strategies, 605, 607
 'crown jewels' defence, 607–8
 litigation, 608–9
 revised profit forecast or dividend policy, 607
 white knight defence, 608
- single director/shareholder companies
 decision-making in, 188
- small–medium enterprises, 246, 263
- small proprietary companies, 102
 appointment of auditor and, 195
 financial records and reports and, 192–3
- Smith, Adam, 5, 7, 8, 11, 47
- societas*, 5, 6

- solvency
 - cash flow test of, 322, 427
- sophisticated investors, 497
- South Sea Company, 7, 10
- special crossings, 536
- specific disclosure requirements, 256
 - content of disclosure documents for listed securities, 257
 - disclosure of interests, 256
 - disclosure of persons, 256
 - expiry date, 257
 - quotation of securities, 257
- stakeholder theory, 61
 - corporate social responsibility and, 63–4
- Statement of Advice, 533
- statutory contract, 125–6
 - effect of, 126–8
 - interpretation of provisions in, 131–2
 - remedies for breach of. *See* remedies for breach of the statutory contract
- statutory corporations, 99
- statutory derivative action, 409
 - grounds for granting leave, 410–13
 - other court orders, 413
 - remedy for oppression and, 414
 - who may apply for derivative action, 409–10
- statutory duty to act in the best interests of the company
 - brief history of, 347
 - coexistence of equity and statute, 346
 - Corporations Act 2001* (Cth) s 181, 347–8
 - international comparison, 349–51
- statutory injunctions, 128
- stock exchanges
 - definition, 495
 - functions of, 495
- supervision of financial markets, 508–11
 - co-regulation between ASIC and Australian Securities Exchange, 509
 - enforcement of listing, operating and market integrity rules, 510–11
 - legal effect of listing, operating and market integrity rules, 510
 - listing, operating and market integrity rules, 509–10
 - market participants and, 509, 511, 544
 - operation of the market by Australian Securities Exchange, 509
- takeover bids, 585
 - definition, 585
 - off-market bids. *See* off-market bids
- takeover defences, 602–3
 - application of directors' duties. *See* application of directors' duties to takeovers
 - auctioneering argument. *See* auctioneering argument
 - break fee, 614–15
 - challenging defensive actions before the Takeovers Panel, 613–14
 - fiduciary argument, 604
 - frustrating action, 609
 - lock-up devices, 614–15
 - passivity argument, 603
 - types of target activity by target. *See* target company defensive activity
- takeover offer, 588
 - bid period. *See* bid period
 - conditions in, 589
 - consideration in, 588
 - defeating conditions, 589, 590, 600, 601, 609, 613, 620
 - maximum and minimum acceptance conditions, 589–90
 - offer period. *See* offer period
- takeovers
 - alternatives to, 565–6
 - concept of 'control', 566
 - creeping takeovers, 583–4
 - defences in relation to, 619–20
 - dispute resolution in, 570–5
 - framework of *Corporations Act 2001* (Cth) Chapter 6 and. *See* Chapter 6, framework of
 - injunctions, 620
 - liabilities in relation to, 618–19
 - market bids. *See* market bids
 - options for, 564–5
 - reasons for regulation of, 567–8
 - remedial orders by a court, 620–1
 - takeover activity in Australia, 567
 - takeovers by consent, 584–5
- Takeovers Panel, 33, 564, 570–2, 608, 613, 620
 - applications to, 572
 - ASIC and, 572
 - bid period and, 588
 - challenge of defensive actions and, 613–14
 - challenges to, 575–6
 - declaration of unacceptable circumstances, 573, 577, 587, 605
 - directors' recommendations and, 598
 - frustrating action and, 609, 612
 - Guidance Note 12, 613, 614
 - lock-up devices and, 615
 - misstatements and, 619
 - non-disclosure or misleading statements and, 594
 - proceedings, 571–2
 - 'unacceptable circumstances', 573–5
- target company defensive activity, 605–6
 - consequences of, 605
 - long-term defensive strategies, 605, 606–7
 - short-term defensive strategies. *See* short-term target company defensive strategies

- target company directors' duties, 611
 - general power of management, 611–12
 - power over transfer of shares, 613
 - power to issue shares, 612
- target's statement, 597–8
 - directors' recommendation, 598
 - notice that statement has been sent to bidder, 600
 - sending the statement to target shareholders, 600
 - sending the statement to the bidder, 599
- team production theory, 53–4
- tipping, 551–2
- tombstone advertising, 258
- twenty investors ceiling, 246, 247, 259
- types of directors, 174
 - alternate directors, 178
 - chairperson, 175–6
 - Chief Financial Officer, 174
 - Chief Operating Officer, 175
 - company secretary, 175
 - de facto directors, 273, 274–5, 322, 361
 - director de jure, 361
 - executive directors, 174
 - independent directors, 174, 177
 - managing director or Chief Executive Officer, 174
 - nominee directors, 177–8
 - non-executive directors, 176–7
 - shadow directors, 273, 275–6, 277, 322, 361
- ultra vires, 47, 122–3, 391
- unacceptable circumstances
 - definition, 573–5
- uncommercial transactions, 476–7
- unfair loans, 477–8
- United Nations Global Compact, 64–5
- United Nations Guiding Principles on Business and Human Rights, 65
- unlimited liability company
 - liability of members to, 106
- vicarious liability
 - company liability and, 89–90
- voidable transactions, 216
 - consequences of, 480
 - exemplification of, 480–2
 - recovery of assets. *See* recovery of assets
 - transactions not voidable against certain people, 480
- voluntary administration, 443–5
 - administrator's role in, 448
 - commencement of, 446–8
 - creditors' meetings. *See* creditor's meetings
 - criticism of, 445
 - deed of company arrangement. *See* deed of company arrangement
 - effect of, 446–7
 - main features of, 444
- voluntary winding up, 487
 - creditors' voluntary winding up, 487–8
 - effect of, 488–9
 - members' voluntary winding up, 487
- voting, members' meetings, 185–6
 - proxy voting, 186–7
- Wallis Report, 497, 503, 504, 509, 526
- whistleblowers, 271
- white knight defence, 608, 612, 614
- winding up, 414–16, 459, 460
 - ASIC and, 418
 - breakdown of mutual trust and, 416
 - by court order, procedure for. *See* procedure for winding up by court order
 - compulsory winding up in insolvency. *See* winding up in insolvency
 - deadlocks, 417–18
 - employees and, 469, 488
 - failure of substratum, 417
 - public interest and, 418–19
 - relation-back day, 467–8, 473, 480
 - under *Corporations Act 2001* (Cth) s 461, 486–7
 - voluntary winding up. *See* voluntary winding up
- winding up in insolvency, 460–1
 - court order to wind up the company. *See* court order to wind up the company
 - effect of, 467–9
 - proving insolvency, 461–2
 - statutory demands, 462–4, 465
 - withdrawal of consent defence, 261